



February 26, 2014

ENGROSSED HOUSE BILL No. 1187

DIGEST OF HB 1187 (Updated February 24, 2014 1:49 pm - DI 55)

Citations Affected: IC 8-1; IC 8-1.5.

Synopsis: Municipal utility service. Provides that a municipal utility's offering or providing of water or wastewater service in an area outside the corporate boundaries of the utility's municipality is under the jurisdiction of the Indiana utility regulatory commission (IURC). Provides that if a municipality, after December 31, 2012, adopts an ordinance asserting exclusive authority to provide utility service in an area outside the municipality's corporate boundaries (a "regulatory ordinance") and the municipality's utility has filed a petition seeking IURC review of the rate and charges for "wholesale sewage service" provided to or by the utility: (1) the municipality shall petition the IURC for approval of the regulatory ordinance; (2) the IURC shall encourage the utilities potentially affected by the regulatory ordinance to reach a mutual agreement about service in the area, and shall assume jurisdiction if the utilities are unable to reach a mutual agreement; (3) the IURC, after assuming jurisdiction and upon considering certain factors, shall issue an order resolving the issues presented by the
(Continued next page)

Effective: Upon passage.

**Bacon, Wolkins, Sullivan,
Niezgodski, Heuer**

(SENATE SPONSOR — CHARBONNEAU)

January 14, 2014, read first time and referred to Committee on Local Government.
January 23, 2014, reported — Do Pass.
January 29, 2014, read second time, amended, ordered engrossed.
January 30, 2014, engrossed. Read third time, passed. Yeas 85, nays 10.

SENATE ACTION

February 4, 2014, read first time and referred to Committee on Local Government.
February 11, 2014, reassigned to Committee on Environmental Affairs.
February 25, 2014, amended, reported favorably — Do Pass.

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petition concerning the regulatory ordinance; and (4) the municipality may enforce the regulatory ordinance if there is a final judgment concluding all administrative and judicial proceedings on the petition concerning wholesale sewage service rates. Provides that if a municipality, after December 31, 2012, adopts a regulatory ordinance and the municipality's utility has not filed a petition with the IURC concerning "wholesale sewage service": (1) the municipality shall petition the IURC for approval of the regulatory ordinance; (2) the IURC, upon considering certain factors, shall issue an order resolving all issues presented in the petition, including the enforceability of the ordinance; (3) if the IURC order approves the municipality's regulatory ordinance, the municipality may enforce the regulatory ordinance; and (4) if the IURC does not approve the municipality's petition, the municipality may modify and resubmit the petition, and if the IURC does not approve the resubmitted petition the regulatory ordinance is void, but the municipality may petition the IURC to rescind or modify its order on the resubmitted petition after five years. Provides for the IURC to resolve any other sort of dispute between municipal utilities as to which municipal utility will provide utility service in an area outside the corporate boundaries of the utilities' municipalities, either through mutual agreement of the utilities or IURC order, and establishes a procedure and criteria for the IURC's resolution of these disputes. Also addresses an ordinance of a municipality expanding the municipality's authority to provide utility service in an area outside the municipality's corporate boundaries.



February 26, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1187

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-61.7, AS ADDED BY P.L.251-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 61.7. (a) As used in this section, "utility"
4 refers to a wastewater utility that:

5 (1) is owned or operated by a political subdivision (as defined in
6 IC 36-1-2-13); and

7 (2) is not under the jurisdiction of the commission for the
8 approval of rates and charges.

9 (b) As used in this section, "wholesale sewage service" means the
10 collection, treatment, purification, and disposal in a sanitary manner of
11 liquid and solid waste, sewage, night soil, and industrial waste
12 provided by a utility to another utility.

13 (c) A utility that:

14 (1) either provides or receives wholesale sewage service; and

15 (2) negotiates to renew or enter into a new contract for wholesale
16 sewage service on expiration of a contract for the same wholesale

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sewage service;
may file a petition for review of rates and charges for wholesale sewage service with the commission or the circuit or superior court with jurisdiction in the county where the utility has its principal office.

(d) If a utility files a petition under subsection (c), the following apply:

(1) The utility that provides the wholesale sewage service has the burden of proving that the rates and charges are just and reasonable.

(2) A petition concerning the same rates and charges may not be filed with both the commission and a court.

(3) If multiple petitions concerning the same rates and charges are filed, all petitions filed after the first petition filed must be:

(A) consolidated with the first petition filed; and

(B) heard in the forum in which the first petition was filed.

(4) The petition is not subject to IC 36-9-23 or IC 36-9-25.

However, the petition may be subject to IC 8-1.5-6.

(5) If the petition is heard by a court, the court shall hear the petition de novo.

(e) After notice and hearing, the commission may issue an order determining whether the rates and charges that are the subject of a petition filed with the commission under subsection (c) are just and reasonable. The order of the commission is a final order for purposes of IC 8-1-3.

(f) This section does not:

(1) authorize the commission to revise rates and charges of a utility for any other purpose other than as stated in this section; or

(2) otherwise return or subject a utility to the jurisdiction of the commission.

(g) The commission may adopt rules under IC 4-22-2 to implement this section.

SECTION 2. IC 8-1-2-86.5 IS REPEALED [EFFECTIVE UPON PASSAGE]. ~~Sec. 86.5: (a) As used in this section, "four (4) mile area" means the area within four (4) miles of a municipality's corporate boundaries.~~

~~(b) Except as provided in subsection (c), the commission, after notice and hearing, may, by order, determine territorial disputes between all water utilities.~~

~~(c) This subsection applies only to a municipality:~~

~~(1) having a population of less than seven thousand five hundred (7,500); and~~

~~(2) that, as of January 1, 2007, has adopted an ordinance~~



exercising the power to regulate the furnishing of water to the public granted by IC 36-9-2-14 within a four (4) mile area.

The commission may not determine a territorial dispute within a four (4) mile area unless the territorial dispute concerns a geographic area located in more than one (1) four (4) mile area.

SECTION 3. IC 8-1-13-18.5, AS AMENDED BY P.L.42-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18.5. (a) Except as provided in subsection (i), a corporation organized under this chapter or a corporation organized under IC 23-17 whose membership includes one (1) or more corporations organized under this chapter may withdraw from the jurisdiction of the commission. A corporation organized under this chapter that withdraws from the jurisdiction of the commission must comply with all provisions of this chapter that do not directly concern the commission and must continue to pay the public utility fee required under IC 8-1-6. A member of a corporation that has withdrawn from the commission's jurisdiction shall have reasonable access to the meetings and the minutes of the meetings of the corporation's board of directors, except for executive sessions that concern personnel matters and confidential or proprietary matters that may:

(1) invade the privacy of a member or an employee of the corporation; or

(2) impair the corporation's bargaining, legal, or competitive position;

if the matter is disclosed to the member.

(b) A corporation that proposes to withdraw under this chapter from the jurisdiction of the commission must first obtain the approval of the members.

(c) The board of a corporation that proposes to withdraw under this chapter from the jurisdiction of the commission must conduct a referendum of the members of the corporation to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.

(d) A board must send written notice of the board's intent to conduct a referendum to the commission before the board may conduct the referendum.

(e) A referendum may be conducted at an annual or special meeting of the members held under section 8 of this chapter if a quorum is present.

(f) Written notice of a meeting at which a referendum is to be conducted must be sent to every member not less than thirty (30) days before the date of the meeting. The notice must contain the following



1 information:

- 2 (1) The place, date, and hour of the meeting.
 3 (2) The fact that a referendum will be conducted at the meeting to
 4 determine whether the members approve of the removal of the
 5 corporation from the jurisdiction of the commission.
 6 (3) The fact that no proxies will be permitted to determine
 7 whether the members approve of the removal of the corporation
 8 from the jurisdiction of the commission.

9 (g) A board shall distribute secret ballots to the members present at
 10 the meeting. The ballots must be in a form substantially equivalent to
 11 the following:

12 ☐ YES. I want the corporation to withdraw from the jurisdiction
 13 of the commission.

14 ☐ NO. I want the corporation to remain under the jurisdiction
 15 of the commission.

16 Only those members present in person at the meeting may vote. Each
 17 member is entitled to one (1) vote on the question of the corporation's
 18 withdrawal from jurisdiction of the commission. If a majority of the
 19 members present vote in favor of withdrawing from the jurisdiction of
 20 the commission, the withdrawal is effective thirty (30) days after the
 21 date of the vote. If less than a majority of the members vote in favor of
 22 withdrawing the corporation from jurisdiction of the commission, the
 23 corporation is prohibited from conducting another referendum
 24 concerning withdrawal for eighteen (18) months following the date of
 25 the meeting at which the vote was taken. Parties aggrieved by the
 26 conduct of the referendum must file an action in the circuit or superior
 27 court with jurisdiction in the county where the corporation has the
 28 corporation's principal office to allege noncompliance with this section
 29 not more than thirty (30) days after the date of the vote.

30 (h) If a corporation withdraws from jurisdiction of the commission,
 31 the corporation's secretary shall not more than five (5) days after the
 32 date of the vote send a verified certification of the vote to the
 33 commission affirming that all the requirements of this section were met
 34 and include all of the following:

- 35 (1) The total membership of the corporation.
 36 (2) The total number of members voting in the referendum.
 37 (3) The actual vote, for and against withdrawal.

38 (i) If a corporation withdraws from the jurisdiction of the
 39 commission, the commission shall continue to exercise jurisdiction
 40 over the corporation only as to the following:

- 41 (1) Electric service area assignments under IC 8-1-2.3.
 42 (2) Certificates of public convenience and necessity, certificates



of territorial authority, and indeterminate permits under IC 8-1-2, IC 8-1-8.5, or IC 8-1-8.7.

~~(3) Water utility disputes under IC 8-1-2-86.5.~~

(j) Whenever two (2) or more corporations organized under this chapter consolidate or merge under section 16 of this chapter, and one (1) but not all of the corporations has withdrawn from the jurisdiction of the commission under this section, the consolidated or merged corporation is under the jurisdiction of the commission until the consolidated or merged corporation withdraws from jurisdiction of the commission under this section, unless the agreement for consolidation or merger approved under section 16 of this chapter includes the withdrawal from the jurisdiction of the commission under this section.

(k) A board of a corporation that has withdrawn from the jurisdiction of the commission under this section must conduct a referendum of the corporation's members to determine whether the corporation should return to the jurisdiction of the commission upon receipt of:

(1) a petition for a referendum signed by not less than fifteen percent (15%) of the corporation's members; or

(2) a resolution ordering a referendum adopted by a majority vote of the board of directors of the corporation.

Upon receipt of the petition or adoption of the resolution by the board, the board shall inform the commission of the petition or resolution and shall thereafter conduct a referendum at the next annual meeting of the corporation held under section 8 of this chapter, or if the next annual meeting is more than ninety (90) days after the date the petition was received or resolution for referendum was adopted by the board, then at a special meeting called by the board and held not more than ninety (90) days after receipt of the petition or adoption of the resolution. The process provided in subsections (d), (e), (f), (g), and (h) shall be followed when conducting a referendum under this subsection, except the form of the ballots must be as follows:

___ YES. I want the corporation to return to the jurisdiction of the commission.

___ NO. I want the corporation to remain outside the jurisdiction of the commission.

If a corporation returns to the jurisdiction of the commission, the commission shall resume all the jurisdiction it would have if the corporation had not withdrawn, effective thirty (30) days following the date the referendum was conducted. If less than a majority of the members voting at the referendum vote in favor of returning to the jurisdiction of the commission, a referendum on the question presented



1 at the referendum may not be conducted for eighteen (18) months
 2 following the date of the vote.

3 SECTION 4. IC 8-1-17.5-25, AS AMENDED BY P.L.256-2013,
 4 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 UPON PASSAGE]: Sec. 25. Notwithstanding any other law, the
 6 commission may exercise jurisdiction over a surviving corporation or
 7 successor corporation formed under this chapter only to do the
 8 following:

9 (1) Ensure compliance with IC 8-1-2.8 concerning the provision
 10 of dual party relay services to deaf, hard of hearing, and speech
 11 impaired persons in Indiana.

12 (2) Perform the commission's duties under IC 8-1-19.5 concerning
 13 the administration of the 211 dialing code for communications
 14 service used to provide access to human services information and
 15 referrals.

16 (3) Enforce rules adopted under IC 8-1-29 to ensure that a
 17 customer of a telecommunications provider is not:

18 (A) switched to another telecommunications provider unless
 19 the customer authorizes the switch; or

20 (B) billed for services by a telecommunications provider that
 21 without the customer's authorization added the services to the
 22 customer's service order.

23 (4) Conduct proceedings under:

24 (A) the federal Telecommunications Act of 1996 (47 U.S.C.
 25 151 et seq.); and

26 (B) IC 20-20-16;

27 concerning universal service and access to telecommunications
 28 service and equipment, including the designation of eligible
 29 telecommunications carriers under 47 U.S.C. 214.

30 (5) Perform the commission's duties under IC 8-1-2.6-1.5 or
 31 IC 8-1-2-5.

32 (6) Issue or maintain certificates of territorial authority for
 33 communications service providers under IC 8-1-32.5.

34 (7) Perform the commission's duties under IC 8-1-34 to issue and
 35 maintain certificates of franchise authority to multichannel video
 36 programming distributors offering video service to Indiana
 37 customers.

38 (8) Perform the commission's duties under IC 8-1-2.6-13(c)(9)
 39 concerning the reporting of information by communications
 40 service providers.

41 (9) Fulfill the commission's duties under any state or federal law
 42 concerning the administration of any universally applicable



dialing code for any communications service.

(10) Perform the commission's duties under IC 8-1-2.3 with respect to assigned service areas for electricity suppliers.

(11) Issue:

(A) certificates of public convenience and necessity, certificates of territorial authority, and indeterminate permits under IC 8-1-2;

(B) certificates of public convenience and necessity under IC 8-1-8.5; or

(C) certificates of public convenience and necessity under IC 8-1-8.7.

(12) Determine territorial disputes between water utilities under ~~IC 8-1-2-86.5~~; **IC 8-1.5-6**.

SECTION 5. IC 8-1-32-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. This chapter does not reduce or supersede the commission's jurisdiction under IC 8-1-2-86 and ~~IC 8-1-2-86.5~~; **IC 8-1.5-6**.

SECTION 6. IC 8-1.5-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 6. Utility Service in Regulated Territories

Sec. 1. As used in this chapter, "municipal utility" refers to a municipally owned:

(1) water utility;

(2) wastewater utility; or

(3) combined water and wastewater utility;

regardless of whether the municipal utility is under the jurisdiction of the commission for the approval of rates and charges.

Sec. 2. As used in this chapter, "regulated territory" means the area outside the corporate boundaries of a municipality described in:

(1) IC 36-9-2-18;

(2) IC 36-9-2-19; or

(3) IC 36-9-23-36.

Sec. 3. As used in this chapter, "regulatory ordinance" means an ordinance adopted by a municipality that:

(1) asserts the exclusive authority of a municipal utility to provide service within a regulated territory; or

(2) prohibits another utility from providing utility service in the regulated territory.

Sec. 4. As used in this chapter, "utility" means a utility that provides:



- (1) water service;
- (2) wastewater service; or
- (3) combined water and wastewater service;

regardless of whether the utility is under the jurisdiction of the commission for the approval of rates and charges. The term includes a municipal utility.

Sec. 5. As used in this chapter, "wholesale sewage petition" refers to a petition filed with the commission under IC 8-1-2-61.7 for review of rates and charges for wholesale sewage service.

Sec. 6. Notwithstanding any other provision in this title or IC 36, the offering or provision of service by a utility in a regulated territory is under the jurisdiction of the commission.

Sec. 7. (a) This section applies if:

- (1) a municipality adopts a regulatory ordinance after December 31, 2012; and
- (2) a utility owned by the municipality files a wholesale sewage petition.

(b) A municipality may not enforce a regulatory ordinance until all of the following conditions are satisfied:

- (1) There is a final judgment on the wholesale sewage petition that concludes all administrative and judicial proceedings. For purposes of this subdivision, a final judgment includes an order of the commission under subsection (f).
- (2) The commission has issued an order under subsection (f) that resolves all issues included in a petition filed under subsection (d) in a manner that the commission determines is in the public interest.
- (3) The municipality has modified the regulatory ordinance to comply with the order of the commission described in subdivision (2), if necessary.

(c) A utility may file with the commission a petition alleging that the final judgment of a court on the wholesale sewage petition does not resolve all issues included in the wholesale sewage petition that are related to:

- (1) the service territory of the municipality; or
- (2) rates and charges for wholesale sewage service.

The commission shall assume immediate and exclusive jurisdiction over the municipal utility upon the filing of the petition for purposes of resolving the remaining issues. After notice and hearing, the commission shall issue an order within three hundred (300) days after the petition is filed resolving all issues presented in the petition in the manner that the commission determines is in the



1 public interest. In making a determination of the public interest,
 2 the commission shall consider the factors set forth in the subsection
 3 (g). The commission may combine a hearing under this subsection
 4 with a hearing under subsection (f) and issue a single order on the
 5 combined hearing.

6 (d) Not later than October 1, 2014, a municipal utility shall
 7 petition the commission for approval of the regulatory ordinance.
 8 The petition must include the following:

9 (1) A description of the service territory established in the
 10 regulatory ordinance.

11 (2) Proposed rates and charges for the services to be provided
 12 in the service territory.

13 (3) A list of any administrative or judicial proceedings
 14 involving the regulatory ordinance or the wholesale sewage
 15 petition.

16 (4) A list of any utilities actually or potentially affected by the
 17 regulatory ordinance.

18 (e) Upon the filing of a petition described in subsection (d), the
 19 commission shall do the following:

20 (1) Encourage all utilities listed under subsection (d)(4) to
 21 reach a mutual agreement that apportions the provision of
 22 service in the regulated territory among the utilities. A mutual
 23 agreement described in this subdivision is the preferred
 24 method of establishing service territories in a regulated
 25 territory. To take effect, a mutual agreement must be
 26 approved by the commission in an order issued under
 27 subsection (f), and the commission may approve a mutual
 28 agreement only if the commission determines that the mutual
 29 agreement is in the public interest.

30 (2) If the utilities are unable to reach a mutual agreement
 31 under subdivision (1), the commission shall assume immediate
 32 and exclusive jurisdiction over the municipal utility, including
 33 the wholesale sewage petition if there is no final judgment
 34 from a court on the wholesale sewage petition.

35 (f) Upon assuming jurisdiction under subsection (e)(2) and after
 36 notice and hearing, the commission shall issue an order resolving:

37 (1) all issues presented in the petition described in subsection
 38 (d), including the enforceability of the regulatory ordinance;
 39 and

40 (2) any applicable issues presented in the wholesale sewage
 41 petition;

42 in the manner that the commission determines is in the public



1 interest. The commission shall issue the order within three hundred
2 (300) days after the petition described in subsection (d) is filed.

3 (g) In making a determination under subsection (f), the
4 commission shall consider the following:

5 (1) The ability of another utility to provide service in the
6 regulated territory.

7 (2) The effect of a commission order on customer rates and
8 charges for service provided in the regulated territory.

9 (3) The effect of the commission's order on present and future
10 economic development in the regulated territory.

11 (4) The history of utility service in the regulated territory,
12 including any contracts for utility service entered into by the
13 municipality that adopted the regulatory ordinance and any
14 other municipalities, municipal utilities, or utilities.

15 (5) Any other factors the commission considers necessary.

16 Sec. 8. (a) This section applies if:

17 (1) a municipality adopts a regulatory ordinance after
18 December 31, 2012; and

19 (2) a utility owned by the municipality does not, or is not
20 eligible to, file a wholesale sewage petition.

21 (b) A municipality may not enforce a regulatory ordinance until
22 the commission issues an order under subsection (c). The
23 municipality shall petition the commission for approval of the
24 regulatory ordinance. The petition must include the following:

25 (1) A description of the service territory established in the
26 regulatory ordinance.

27 (2) Proposed rates and charges for the services to be provided
28 in the service territory.

29 (3) A list of any administrative or judicial proceedings
30 involving the regulatory ordinance.

31 (4) A list of any utilities actually or potentially affected by the
32 regulatory ordinance.

33 (c) After notice and hearing, the commission shall issue an order
34 resolving all issues presented in the petition described in subsection
35 (b), including the enforceability of the regulatory ordinance in the
36 manner that the commission determines is in the public interest. In
37 making a determination of the public interest, the commission shall
38 consider the factors set forth in section 7(g) of this chapter. The
39 commission shall issue the order within three hundred (300) days
40 after the petition described in subsection (b) is filed.

41 (d) If the commission does not approve the petition, the
42 municipality may modify and resubmit the petition in the manner



prescribed by the commission. After notice and hearing, the commission shall review the petition as set forth in subsection (c). If the commission does not approve the resubmitted petition, the regulatory ordinance is void.

(e) The municipality may petition the commission to rescind or modify an order issued under subsection (c) not earlier than five (5) years after the date on which the order was issued.

Sec. 9. (a) This section applies to a dispute, other than a dispute described in section 7 or 8 of this chapter, arising or existing between two (2) or more utilities as to which utility will provide utility service in a regulated territory. A dispute shall be resolved by the commission under this section.

(b) A proceeding under this section may be initiated:

(1) by a utility that is a party to a dispute described in subsection (a); or

(2) by the commission on its own initiative.

(c) Throughout a proceeding under this section, the commission shall, where feasible, promote the resolution of the dispute described in subsection (a) through a mutual agreement between the utilities that apportions the provision of utility service in the regulated territory. A mutual agreement described in this subsection is the preferred way of resolving a dispute described in subsection (a). However, to resolve the dispute, a mutual agreement must be approved by the commission in an order issued under subsection (e), and the commission may approve a mutual agreement only if the commission determines that the mutual agreement is in the public interest.

(d) If the utilities are unable to reach a mutual agreement under subsection (c), the commission shall determine the manner in which utilities shall provide service in the regulated territory. In making the determination, the commission shall consider the criteria set forth in section 7(g) of this chapter.

(e) After notice and hearing, the commission shall issue an order:

(1) approving a mutual agreement under subsection (c); or

(2) making a final determination under subsection (d).

Sec. 10. This section applies to a municipality that:

(1) after December 31, 2012, adopts a regulatory ordinance that establishes a service territory that is smaller than the regulated territory; and

(2) either:

(A) amends the ordinance described in subdivision (1); or



1 **(B) adopts a new ordinance;**
 2 **to establish a service territory that is larger than the service**
 3 **territory described in subdivision (1).**
 4 **Before an ordinance described in subdivision (2) may take effect,**
 5 **the municipality shall submit the ordinance to the commission for**
 6 **approval under section 9 of this chapter.**
 7 **Sec. 11. An order issued by the commission under this chapter**
 8 **is a final order for purposes of IC 8-1-3 and is enforceable in court.**
 9 **Sec. 12. A petition filed under this chapter is not subject to the**
 10 **following:**
 11 **(1) IC 8-1.5-3.**
 12 **(2) IC 36-9-23.**
 13 **(3) IC 36-9-25.**
 14 **SECTION 7. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1187, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1187 as introduced.)

Committee Vote: Yeas 10, Nays 1

Representative Neese

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1187 be amended to read as follows:

Page 1, delete lines 1 through 6.

Page 1, line 8, delete "JULY 1, 2014]:" and insert "UPON PASSAGE]:".

Page 1, line 8, after "18." insert "(a)".

Page 1, delete lines 11 through 16, begin a new paragraph and insert:

"(b) This subsection applies to an ordinance that reserves to a municipality the exclusive right to exercise a power granted by section 14, 16, or 17 of this chapter in an area within four (4) miles outside the municipality's corporate boundaries. A municipality that adopted an ordinance described in this subsection before January 1, 2014, may not enforce the ordinance until May 1, 2017. An ordinance described in this subsection that is adopted after December 31, 2013, is void.

SECTION 2. An emergency is declared for this act."

Delete page 2.

Renumber all SECTIONS consecutively.

(Reference is to HB 1187 as printed January 24, 2014.)

HEUER



HOUSE MOTION

Mr. Speaker: I move that House Bill 1187 be amended to read as follows:

Page 2, line 5, delete "the area" and insert "**an area that is**".

Page 2, line 6, after "municipality" insert "**and that is**".

Page 2, after line 28, begin a new paragraph and insert:

"SECTION 5. IC 36-9-25-11, AS AMENDED BY P.L.168-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) In connection with its duties, the board may fix fees for the treatment and disposal of sewage and other waste discharged into the sewerage system, collect the fees, and establish and enforce rules governing the furnishing of and payment for sewage treatment and disposal service. The fees must be just and equitable and shall be paid by any user of the sewage works and the owner of every lot, parcel of real property, or building that is connected with and uses the sewage works of the district by or through any part of the sewerage system. This section applies to owners of property that is partially or wholly exempt from taxation, as well as owners of property subject to full taxation.

(b) The board may change fees from time to time. The fees, together with the taxes levied under this chapter, must at all times be sufficient to produce revenues sufficient to pay operation, maintenance, and administrative expenses, to pay the principal and interest on bonds as they become due and payable, and to provide money for the revolving fund authorized by this chapter.

(c) Fees may not be established until a public hearing has been held at which all the users of the sewage works and owners of property served or to be served by the works, including interested parties, have had an opportunity to be heard concerning the proposed fees. After introduction of the resolution fixing fees, and before they are finally adopted, notice of the hearing setting forth the proposed schedule of fees shall be given by publication in accordance with IC 5-3-1. After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect. However, fees related to property that is subject to full taxation do not take effect until they have been approved by ordinance of the municipal legislative body or, in the case of a district described in section 3(b)(2) of this chapter, under section 11.3 of this chapter.

(d) A copy of the schedule of the fees shall be kept on file in the office of the board and must be open to inspection by all interested parties. **Subject to section 11.6 of this chapter**, the fees established

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for any class of users or property served shall be extended to cover any additional premises thereafter served that fall within the same class, without the necessity of hearing or notice.

(e) A change of fees may be made in the same manner as fees were originally established. However, **subject to section 11.6 of this chapter**, if a change is made substantially pro rata for all classes of service, hearing or notice is not required, but approval of the change by ordinance of the municipal legislative body is required, and, in the case of a district described in section 3(b)(2) of this chapter, approval under section 11.3 of this chapter is required.

(f) If a fee established is not paid within thirty (30) days after it is due, the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee, may be recovered by the board from the delinquent user or owner of the property served in a civil action in the name of the municipality.

(g) Fees assessed against real property under this section also constitute a lien against the property assessed. The lien attaches at the time of the filing of the notice of lien in the county recorder's office. The lien is superior to all other liens except tax liens, and shall be enforced and foreclosed in the same manner as is provided for liens under IC 36-9-23-33 and IC 36-9-23-34.

(h) A fee assessed against real property under this section constitutes a lien against the property assessed only when the fee is delinquent for no more than three (3) years from the day after the fee is due.

(i) In addition to the penalties under subsections (f) and (g) and section 11.5 of this chapter, a delinquent user may not discharge water into the public sewers and may have the property disconnected from the public sewers.

(j) The authority to establish a user fee under this section includes fees to recover the cost of construction of sewage works from industrial users as defined and required under federal statute or rule. Any industrial users' cost recovery fees may become a lien upon the real property and shall be collected in the manner provided by law. In addition, the imposition of the fees, the use of the amounts collected, and the criteria for the fees must be consistent with the regulations of the federal Environmental Protection Agency.

(k) The authority to establish a user fee under this section includes fees to recover the costs associated with providing financial assistance under section 42 of this chapter. A fee that is:

- (1) established under this subsection or any other law; and
- (2) used to provide financial assistance under section 42 of this



chapter;
is considered just and equitable if the project for which the financial assistance is provided otherwise complies with the requirements of this chapter.

SECTION 6. IC 36-9-25-11.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.6. (a) As used in this section, "multipurpose building" means a building that:**

- (1) is connected with and uses the sewage works of a district; and**
- (2) is used for more than one (1) purpose or has individual units or parts that are used for different purposes.**

(b) As used in this section, "purpose" means the primary use to which a lot, parcel of real property, or building is put and that is the basis for a particular schedule or class of fees established by a district under section 11 of this chapter. The term includes any of the following purposes to which a lot, parcel of real property, or building is put:

- (1) Residential purposes.**
- (2) Industrial purposes.**
- (3) Commercial purposes.**
- (4) Agricultural purposes.**

(c) In establishing fees under section 11 of this chapter for the treatment and disposal of sewage and other waste discharged into the district's sewer system, a district must provide for:

- (1) the apportionment or proration of fees assessed with respect to a multipurpose building in a manner that recognizes the different purposes to which the multipurpose building is put; or**
- (2) the application of different fee schedules or classifications of fees to the individual units or parts of a multipurpose building in a manner that recognizes the primary purpose of the individual units or parts.**

(d) Any schedule of fees that:

- (1) is adopted under this chapter before April 1, 2014; and**
- (2) does not comply with the requirements of this section with respect to multipurpose buildings;**

shall, not later than September 30, 2014, be changed or amended



in the manner specified in section 11(e) of this chapter to comply with the requirements of this section.

SECTION 7. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to HB 1187 as printed January 24, 2014.)

SMITH V

COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred House Bill No. 1187, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 16, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-61.7, AS ADDED BY P.L.251-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 61.7. (a) As used in this section, "utility" refers to a wastewater utility that:

- (1) is owned or operated by a political subdivision (as defined in IC 36-1-2-13); and
- (2) is not under the jurisdiction of the commission for the approval of rates and charges.

(b) As used in this section, "wholesale sewage service" means the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste provided by a utility to another utility.

(c) A utility that:

- (1) either provides or receives wholesale sewage service; and
- (2) negotiates to renew or enter into a new contract for wholesale sewage service on expiration of a contract for the same wholesale sewage service;

may file a petition for review of rates and charges for wholesale sewage service with the commission or the circuit or superior court with jurisdiction in the county where the utility has its principal office.

(d) If a utility files a petition under subsection (c), the following apply:

- (1) The utility that provides the wholesale sewage service has the burden of proving that the rates and charges are just and reasonable.

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(2) A petition concerning the same rates and charges may not be filed with both the commission and a court.

(3) If multiple petitions concerning the same rates and charges are filed, all petitions filed after the first petition filed must be:

(A) consolidated with the first petition filed; and

(B) heard in the forum in which the first petition was filed.

(4) The petition is not subject to IC 36-9-23 or IC 36-9-25.

However, the petition may be subject to IC 8-1.5-6.

(5) If the petition is heard by a court, the court shall hear the petition de novo.

(e) After notice and hearing, the commission may issue an order determining whether the rates and charges that are the subject of a petition filed with the commission under subsection (c) are just and reasonable. The order of the commission is a final order for purposes of IC 8-1-3.

(f) This section does not:

(1) authorize the commission to revise rates and charges of a utility for any other purpose other than as stated in this section; or

(2) otherwise return or subject a utility to the jurisdiction of the commission.

(g) The commission may adopt rules under IC 4-22-2 to implement this section.

SECTION 2. IC 8-1-2-86.5 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 86.5: (a) ~~As used in this section, "four (4) mile area" means the area within four (4) miles of a municipality's corporate boundaries.~~

~~(b) Except as provided in subsection (c), the commission, after notice and hearing, may, by order, determine territorial disputes between all water utilities.~~

~~(c) This subsection applies only to a municipality:~~

~~(1) having a population of less than seven thousand five hundred (7,500); and~~

~~(2) that, as of January 1, 2007, has adopted an ordinance exercising the power to regulate the furnishing of water to the public granted by IC 36-9-2-14 within a four (4) mile area.~~

~~The commission may not determine a territorial dispute within a four (4) mile area unless the territorial dispute concerns a geographic area located in more than one (1) four (4) mile area.~~

SECTION 3. IC 8-1-13-18.5, AS AMENDED BY P.L.42-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18.5. (a) Except as provided in subsection (i), a corporation organized under this chapter or a corporation organized



under IC 23-17 whose membership includes one (1) or more corporations organized under this chapter may withdraw from the jurisdiction of the commission. A corporation organized under this chapter that withdraws from the jurisdiction of the commission must comply with all provisions of this chapter that do not directly concern the commission and must continue to pay the public utility fee required under IC 8-1-6. A member of a corporation that has withdrawn from the commission's jurisdiction shall have reasonable access to the meetings and the minutes of the meetings of the corporation's board of directors, except for executive sessions that concern personnel matters and confidential or proprietary matters that may:

- (1) invade the privacy of a member or an employee of the corporation; or
- (2) impair the corporation's bargaining, legal, or competitive position;

if the matter is disclosed to the member.

(b) A corporation that proposes to withdraw under this chapter from the jurisdiction of the commission must first obtain the approval of the members.

(c) The board of a corporation that proposes to withdraw under this chapter from the jurisdiction of the commission must conduct a referendum of the members of the corporation to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.

(d) A board must send written notice of the board's intent to conduct a referendum to the commission before the board may conduct the referendum.

(e) A referendum may be conducted at an annual or special meeting of the members held under section 8 of this chapter if a quorum is present.

(f) Written notice of a meeting at which a referendum is to be conducted must be sent to every member not less than thirty (30) days before the date of the meeting. The notice must contain the following information:

- (1) The place, date, and hour of the meeting.
- (2) The fact that a referendum will be conducted at the meeting to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.
- (3) The fact that no proxies will be permitted to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.

(g) A board shall distribute secret ballots to the members present at



the meeting. The ballots must be in a form substantially equivalent to the following:

___ YES. I want the corporation to withdraw from the jurisdiction of the commission.

___ NO. I want the corporation to remain under the jurisdiction of the commission.

Only those members present in person at the meeting may vote. Each member is entitled to one (1) vote on the question of the corporation's withdrawal from jurisdiction of the commission. If a majority of the members present vote in favor of withdrawing from the jurisdiction of the commission, the withdrawal is effective thirty (30) days after the date of the vote. If less than a majority of the members vote in favor of withdrawing the corporation from jurisdiction of the commission, the corporation is prohibited from conducting another referendum concerning withdrawal for eighteen (18) months following the date of the meeting at which the vote was taken. Parties aggrieved by the conduct of the referendum must file an action in the circuit or superior court with jurisdiction in the county where the corporation has the corporation's principal office to allege noncompliance with this section not more than thirty (30) days after the date of the vote.

(h) If a corporation withdraws from jurisdiction of the commission, the corporation's secretary shall not more than five (5) days after the date of the vote send a verified certification of the vote to the commission affirming that all the requirements of this section were met and include all of the following:

- (1) The total membership of the corporation.
- (2) The total number of members voting in the referendum.
- (3) The actual vote, for and against withdrawal.

(i) If a corporation withdraws from the jurisdiction of the commission, the commission shall continue to exercise jurisdiction over the corporation only as to the following:

- (1) Electric service area assignments under IC 8-1-2.3.
- (2) Certificates of public convenience and necessity, certificates of territorial authority, and indeterminate permits under IC 8-1-2, IC 8-1-8.5, or IC 8-1-8.7.
- ~~(3) Water utility disputes under IC 8-1-2-86.5.~~

(j) Whenever two (2) or more corporations organized under this chapter consolidate or merge under section 16 of this chapter, and one (1) but not all of the corporations has withdrawn from the jurisdiction of the commission under this section, the consolidated or merged corporation is under the jurisdiction of the commission until the consolidated or merged corporation withdraws from jurisdiction of the



commission under this section, unless the agreement for consolidation or merger approved under section 16 of this chapter includes the withdrawal from the jurisdiction of the commission under this section.

(k) A board of a corporation that has withdrawn from the jurisdiction of the commission under this section must conduct a referendum of the corporation's members to determine whether the corporation should return to the jurisdiction of the commission upon receipt of:

- (1) a petition for a referendum signed by not less than fifteen percent (15%) of the corporation's members; or
- (2) a resolution ordering a referendum adopted by a majority vote of the board of directors of the corporation.

Upon receipt of the petition or adoption of the resolution by the board, the board shall inform the commission of the petition or resolution and shall thereafter conduct a referendum at the next annual meeting of the corporation held under section 8 of this chapter, or if the next annual meeting is more than ninety (90) days after the date the petition was received or resolution for referendum was adopted by the board, then at a special meeting called by the board and held not more than ninety (90) days after receipt of the petition or adoption of the resolution. The process provided in subsections (d), (e), (f), (g), and (h) shall be followed when conducting a referendum under this subsection, except the form of the ballots must be as follows:

___ YES. I want the corporation to return to the jurisdiction of the commission.

___ NO. I want the corporation to remain outside the jurisdiction of the commission.

If a corporation returns to the jurisdiction of the commission, the commission shall resume all the jurisdiction it would have if the corporation had not withdrawn, effective thirty (30) days following the date the referendum was conducted. If less than a majority of the members voting at the referendum vote in favor of returning to the jurisdiction of the commission, a referendum on the question presented at the referendum may not be conducted for eighteen (18) months following the date of the vote.

SECTION 4. IC 8-1-17.5-25, AS AMENDED BY P.L.256-2013, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. Notwithstanding any other law, the commission may exercise jurisdiction over a surviving corporation or successor corporation formed under this chapter only to do the following:

- (1) Ensure compliance with IC 8-1-2.8 concerning the provision



of dual party relay services to deaf, hard of hearing, and speech impaired persons in Indiana.

(2) Perform the commission's duties under IC 8-1-19.5 concerning the administration of the 211 dialing code for communications service used to provide access to human services information and referrals.

(3) Enforce rules adopted under IC 8-1-29 to ensure that a customer of a telecommunications provider is not:

(A) switched to another telecommunications provider unless the customer authorizes the switch; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

(4) Conduct proceedings under:

(A) the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq.); and

(B) IC 20-20-16;

concerning universal service and access to telecommunications service and equipment, including the designation of eligible telecommunications carriers under 47 U.S.C. 214.

(5) Perform the commission's duties under IC 8-1-2.6-1.5 or IC 8-1-2-5.

(6) Issue or maintain certificates of territorial authority for communications service providers under IC 8-1-32.5.

(7) Perform the commission's duties under IC 8-1-34 to issue and maintain certificates of franchise authority to multichannel video programming distributors offering video service to Indiana customers.

(8) Perform the commission's duties under IC 8-1-2.6-13(c)(9) concerning the reporting of information by communications service providers.

(9) Fulfill the commission's duties under any state or federal law concerning the administration of any universally applicable dialing code for any communications service.

(10) Perform the commission's duties under IC 8-1-2.3 with respect to assigned service areas for electricity suppliers.

(11) Issue:

(A) certificates of public convenience and necessity, certificates of territorial authority, and indeterminate permits under IC 8-1-2;

(B) certificates of public convenience and necessity under IC 8-1-8.5; or



(C) certificates of public convenience and necessity under IC 8-1-8.7.

(12) Determine territorial disputes between water utilities under ~~IC 8-1-2-86.5~~; **IC 8-1.5-6**.

SECTION 5. IC 8-1-32-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. This chapter does not reduce or supersede the commission's jurisdiction under IC 8-1-2-86 and ~~IC 8-1-2-86.5~~; **IC 8-1.5-6**.

SECTION 3. IC 8-1.5-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 6. Utility Service in Regulated Territories

Sec. 1. As used in this chapter, "municipal utility" refers to a municipally owned:

- (1) water utility;
- (2) wastewater utility; or
- (3) combined water and wastewater utility;

regardless of whether the municipal utility is under the jurisdiction of the commission for the approval of rates and charges.

Sec. 2. As used in this chapter, "regulated territory" means the area outside the corporate boundaries of a municipality described in:

- (1) IC 36-9-2-18;
- (2) IC 36-9-2-19; or
- (3) IC 36-9-23-36.

Sec. 3. As used in this chapter, "regulatory ordinance" means an ordinance adopted by a municipality that:

- (1) asserts the exclusive authority of a municipal utility to provide service within a regulated territory; or
- (2) prohibits another utility from providing utility service in the regulated territory.

Sec. 4. As used in this chapter, "utility" means a utility that provides:

- (1) water service;
- (2) wastewater service; or
- (3) combined water and wastewater service;

regardless of whether the utility is under the jurisdiction of the commission for the approval of rates and charges. The term includes a municipal utility.

Sec. 5. As used in this chapter, "wholesale sewage petition" refers to a petition filed with the commission under IC 8-1-2-61.7 for review of rates and charges for wholesale sewage service.



Sec. 6. Notwithstanding any other provision in this title or IC 36, the offering or provision of service by a utility in a regulated territory is under the jurisdiction of the commission.

Sec. 7. (a) This section applies if:

- (1) a municipality adopts a regulatory ordinance after December 31, 2012; and
- (2) a utility owned by the municipality files a wholesale sewage petition.

(b) A municipality may not enforce a regulatory ordinance until all of the following conditions are satisfied:

- (1) There is a final judgment on the wholesale sewage petition that concludes all administrative and judicial proceedings. For purposes of this subdivision, a final judgment includes an order of the commission under subsection (f).
- (2) The commission has issued an order under subsection (f) that resolves all issues included in a petition filed under subsection (d) in a manner that the commission determines is in the public interest.
- (3) The municipality has modified the regulatory ordinance to comply with the order of the commission described in subdivision (2), if necessary.

(c) A utility may file with the commission a petition alleging that the final judgment of a court on the wholesale sewage petition does not resolve all issues included in the wholesale sewage petition that are related to:

- (1) the service territory of the municipality; or
- (2) rates and charges for wholesale sewage service.

The commission shall assume immediate and exclusive jurisdiction over the municipal utility upon the filing of the petition for purposes of resolving the remaining issues. After notice and hearing, the commission shall issue an order within three hundred (300) days after the petition is filed resolving all issues presented in the petition in the manner that the commission determines is in the public interest. In making a determination of the public interest, the commission shall consider the factors set forth in the subsection (g). The commission may combine a hearing under this subsection with a hearing under subsection (f) and issue a single order on the combined hearing.

(d) Not later than October 1, 2014, a municipal utility shall petition the commission for approval of the regulatory ordinance. The petition must include the following:

- (1) A description of the service territory established in the



regulatory ordinance.

(2) Proposed rates and charges for the services to be provided in the service territory.

(3) A list of any administrative or judicial proceedings involving the regulatory ordinance or the wholesale sewage petition.

(4) A list of any utilities actually or potentially affected by the regulatory ordinance.

(e) Upon the filing of a petition described in subsection (d), the commission shall do the following:

(1) Encourage all utilities listed under subsection (d)(4) to reach a mutual agreement that apportions the provision of service in the regulated territory among the utilities. A mutual agreement described in this subdivision is the preferred method of establishing service territories in a regulated territory. To take effect, a mutual agreement must be approved by the commission in an order issued under subsection (f), and the commission may approve a mutual agreement only if the commission determines that the mutual agreement is in the public interest.

(2) If the utilities are unable to reach a mutual agreement under subdivision (1), the commission shall assume immediate and exclusive jurisdiction over the municipal utility, including the wholesale sewage petition if there is no final judgment from a court on the wholesale sewage petition.

(f) Upon assuming jurisdiction under subsection (e)(2) and after notice and hearing, the commission shall issue an order resolving:

(1) all issues presented in the petition described in subsection (d), including the enforceability of the regulatory ordinance; and

(2) any applicable issues presented in the wholesale sewage petition;

in the manner that the commission determines is in the public interest. The commission shall issue the order within three hundred (300) days after the petition described in subsection (d) is filed.

(g) In making a determination under subsection (f), the commission shall consider the following:

(1) The ability of another utility to provide service in the regulated territory.

(2) The effect of a commission order on customer rates and charges for service provided in the regulated territory.

(3) The effect of the commission's order on present and future



economic development in the regulated territory.

(4) The history of utility service in the regulated territory, including any contracts for utility service entered into by the municipality that adopted the regulatory ordinance and any other municipalities, municipal utilities, or utilities.

(5) Any other factors the commission considers necessary.

Sec. 8. (a) This section applies if:

(1) a municipality adopts a regulatory ordinance after December 31, 2012; and

(2) a utility owned by the municipality does not, or is not eligible to, file a wholesale sewage petition.

(b) A municipality may not enforce a regulatory ordinance until the commission issues an order under subsection (c). The municipality shall petition the commission for approval of the regulatory ordinance. The petition must include the following:

(1) A description of the service territory established in the regulatory ordinance.

(2) Proposed rates and charges for the services to be provided in the service territory.

(3) A list of any administrative or judicial proceedings involving the regulatory ordinance.

(4) A list of any utilities actually or potentially affected by the regulatory ordinance.

(c) After notice and hearing, the commission shall issue an order resolving all issues presented in the petition described in subsection (b), including the enforceability of the regulatory ordinance in the manner that the commission determines is in the public interest. In making a determination of the public interest, the commission shall consider the factors set forth in section 7(g) of this chapter. The commission shall issue the order within three hundred (300) days after the petition described in subsection (b) is filed.

(d) If the commission does not approve the petition, the municipality may modify and resubmit the petition in the manner prescribed by the commission. After notice and hearing, the commission shall review the petition as set forth in subsection (c). If the commission does not approve the resubmitted petition, the regulatory ordinance is void.

(e) The municipality may petition the commission to rescind or modify an order issued under subsection (c) not earlier than five (5) years after the date on which the order was issued.

Sec. 9. (a) This section applies to a dispute, other than a dispute described in section 7 or 8 of this chapter, arising or existing



between two (2) or more utilities as to which utility will provide utility service in a regulated territory. A dispute shall be resolved by the commission under this section.

(b) A proceeding under this section may be initiated:

- (1) by a utility that is a party to a dispute described in subsection (a); or
- (2) by the commission on its own initiative.

(c) Throughout a proceeding under this section, the commission shall, where feasible, promote the resolution of the dispute described in subsection (a) through a mutual agreement between the utilities that apportions the provision of utility service in the regulated territory. A mutual agreement described in this subsection is the preferred way of resolving a dispute described in subsection (a). However, to resolve the dispute, a mutual agreement must be approved by the commission in an order issued under subsection (e), and the commission may approve a mutual agreement only if the commission determines that the mutual agreement is in the public interest.

(d) If the utilities are unable to reach a mutual agreement under subsection (c), the commission shall determine the manner in which utilities shall provide service in the regulated territory. In making the determination, the commission shall consider the criteria set forth in section 7(g) of this chapter.

(e) After notice and hearing, the commission shall issue an order:

- (1) approving a mutual agreement under subsection (c); or
- (2) making a final determination under subsection (d).

Sec. 10. This section applies to a municipality that:

- (1) after December 31, 2012, adopts a regulatory ordinance that establishes a service territory that is smaller than the regulated territory; and

(2) either:

- (A) amends the ordinance described in subdivision (1); or
- (B) adopts a new ordinance;

to establish a service territory that is larger than the service territory described in subdivision (1).

Before an ordinance described in subdivision (2) may take effect, the municipality shall submit the ordinance to the commission for approval under section 9 of this chapter.

Sec. 11. An order issued by the commission under this chapter is a final order for purposes of IC 8-1-3 and is enforceable in court.

Sec. 12. A petition filed under this chapter is not subject to the



following:

(1) IC 8-1.5-3.

(2) IC 36-9-23.

(3) IC 36-9-25."

Delete pages 2 through 3.

Page 4, delete lines 1 through 30.

Page 4, delete line 32.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1187 as reprinted January 30, 2014.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 8, Nays 0.

